



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

March 23, 2020

Mr. Sean S. Heaney
Department of the Navy
Naval Facilities Engineering Command, Mid-Atlantic
9324 Virginia Avenue
Norfolk, VA 23511-3212

RE: Tank Farm 5 Soil Stockpile Request for Information Under the Comprehensive,
Environmental Response, Compensation, and Liability Act and the Clean Air Act

Dear Mr. Heaney:

In its October 1, 2019 letter, the United States Environmental Protection Agency (EPA) sought to clarify its role in the review process for the sampling plans proposed for the soil/debris stockpiles at Tank Farm 5 at Naval Station Newport (NAVSTA). EPA requested that the Navy document the sources of the material disposed at Tank Farm 5 so that it could evaluate the potential composition of the material in each pile and to determine whether the material's disposal falls under the requirements of an existing Record of Decision (ROD) or from any other Federal or State regulatory action at the Base. The Navy responded on October 30, 2019 that it was investigating the source of the soils, but it would require significant research to determine the exact origin. No response has been provided to EPA's request to document the nature of the materials or explain how the proposed work will be addressed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, and the Federal Facility Agreement (FFA), signed among the Navy, EPA, and the State of Rhode Island in 1992, or under any other statutory authority.

EPA is therefore requiring the Navy to submit certain information concerning releases or threats of release of hazardous substances, pollutants and contaminants at NAVSTA (also encompassing the Naval Education Training Center Superfund Site) under both the requirements of CERCLA and the FFA, and the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.* Attachment 1 provides instructions and definitions and Attachment 2 specifies the information that the Navy must submit under the requirements of Section XXXV of the FFA and Section 114(a)(1) of the Clean Air Act, 42 U.S.C. § 414(a)(1). Please send this information to EPA within 30 days of receipt of this request.

CERCLA/FFA Requirements

Under Section XXXV, RELEASE OF RECORDS of the FFA, the Navy is required to submit information as requested by EPA. Specifically, Section 35.1 states that the "...Parties may

request of one another access to or a copy of any record or document relating to this Agreement. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document, provided, however, that no access to or copies of records or documents need be provided”

CAA Requirements

EPA is investigating asbestos-related activities that may have been conducted by the Navy, its employees, contractors or agents at NAVSTA and, in particular, whether such activities, as further described below, were in compliance with the CAA and asbestos regulations promulgated under Section 112 of the CAA (Hazardous Air Pollutants) known as the “Asbestos NESHAP” standards, 40 C.F.R. Part 61, Subpart M.

Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), gives EPA the authority to require any person subject to the CAA (or with information about a facility’s compliance status) to submit such information as EPA may reasonably require to evaluate CAA compliance. By this request, EPA is requiring the Navy to submit information concerning activities, including any activities relating to demolition or renovation operations conducted at NAVSTA as well as any associated asbestos removal, transportation, or disposal activities that caused or contributed to the presence of asbestos-containing materials in soil/debris stockpiles at Tank Farm 5.

If desired, the Navy may assert a business confidentiality claim covering part or all the information requested, in the manner described by 40 C.F.R. § 2.203(b). Please review the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. If no confidentiality claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice.

Response Instructions

As part of your response, please complete the enclosed Declaration (Attachment 3) and provide a cover letter specifying what documentation has been included in the response to each numbered item. Information submitted in response to this request shall be sent by certified mail to the following two addresses:

Jane Dolan, Remedial Project Manager
Superfund Federal Facilities & Information Management Section
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 07-3)
Boston, MA 02109-3912

and

NAVSTA Newport - Tank Farm 5
CERCLA/CAA Information Request

Jordan Alves, Asbestos NESHAP Coordinator
Toxics, Pesticides & Drinking Water Compliance Section
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 05-4)
Boston, MA 02109-3912

If you have information about other parties who may have information that may assist EPA in its investigation or may be responsible for the contamination at Tank Farm 5, that information must also be submitted within the time frame noted above.

While EPA seeks your cooperation in this investigation, compliance with this information request is required by CERCLA, the CAA, and the FFA. Failure to respond fully and truthfully or to adequately justify a failure to respond, may result in an enforcement action. Please note that noncompliance, or false, fictitious, or fraudulent statements or representations may subject the Navy to penalties under federal law and/or the FFA.

Questions regarding this information request should be directed to Jane Dolan (for CERCLA questions) at (617) 918-1272 or dolan.jane@epa.gov and Jordan Alves (for CAA questions) at (617) 918-1739 or alves.jordan@epa.gov. Questions of a legal nature should be directed to David Peterson, Senior Enforcement Counsel, at (617) 918-1891 or peterson.david@epa.gov.

EPA reserves its rights to take future enforcement actions, if determined to be appropriate, under its sole discretion. EPA appreciates your prompt response to this information request within 30 days of the date of this letter.

Margaret Leshen, Branch Chief
Remediation Branch II
Superfund and Emergency Management
Division

James Chow, Deputy Director
Enforcement and Compliance
Assurance Division

Attachments

1. Instructions/Definitions
2. CERCLA Information Request and CAA/NESHAP Reporting Requirements
3. Declaration
4. Absherco.com

ATTACHMENT 1

INSTRUCTIONS/DEFINITIONS

Instructions

1. Unless otherwise indicated, please answer each numbered question separately for each of the Projects and, for each response, include all responsive information or, a specific reference to the information, if provided in response to a previous question.
2. Please provide a separate narrative response to every numbered item and subpart of an item set forth in this Reporting Requirement. Precede each answer with the number of the item and subpart to which the answer corresponds. All documents submitted should indicate the numbered item and subpart to which they are responsive.
3. If any item cannot be answered in full, answer to the extent possible. If your responses are qualified in any manner, please explain.
4. If information or documents not known or not available to you as of the date of submission of your response to this request should later become known or available to you, you should supplement your response to the EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you should notify EPA as soon as possible and provide a corrected response.
5. Your response should include copies of any records and information available to and relied upon by the Navy to answer any of the items in this Reporting Requirement. If the documentation that supports a response to one item duplicates the documentation that supports another item, only submit one copy and note all items and subparts to which it responds. The submission must be a complete response that is dated and signed by an authorized official of the Navy.

Definitions

1. Unless otherwise indicated, terms used in this CERCLA Information Request/NESHAP Reporting Requirement are defined under Section 101 of CERCLA, Section III of the FFA and/or the Asbestos NESHAP, at 40 C.F.R. § 61.141. To the extent any given term has a separate definition under CERCLA, the FFA and/or the Asbestos NESHAP, contact EPA if the Navy needs clarification on how the term should be applied to any given section of this CERCLA Information Request/NESHAP Reporting Requirement.

ATTACHMENT 2

**CERCLA INFORMATION REQUEST AND CAA/NESHAP REPORTING
REQUIREMENTS**

1. Provide a detailed description of all activities conducted by the Navy, its representatives, and contractors that led to the generation of the soil/debris piles that have been disposed at Tank Farm 5 at NAVSTA Newport. Provide copies of all correspondence, memoranda, notes, electronic files or other documents concerning such activities. Identify all personnel who carried out these activities, and the time periods that these activities occurred. This response should address, but not be limited to:
 - a. Describe the Navy's knowledge of the transportation to, storage and/or disposal at Tank Farm 5 of soils, solid waste, or other materials from construction projects, CERCLA remediation projects, or any other type of project. State the time periods when such events occurred, the frequency of such events (including the date(s) on which such transportation, storage or disposal occurred, if known), the specific materials involved, the volumes of such materials. Provide all documents that relate to or reflect the knowledge of the Navy, of the transportation, storage and/or disposal of such materials. Identify all persons, including but not limited to Navy employees, representatives, and contractors, with any knowledge of these events.
 - b. State the specific types of soils, solid wastes, debris, or other materials disposed, the volumes disposed, the method of disposal, and the dates of such disposal. Explain why the Navy disposed these soils/debris or other materials in this manner. Provide a complete description of such instances of disposal and provide all documents that relate to such disposal. Identify all persons with knowledge of such disposal.
 - c. Provide all analytical results, whether generated *in situ* or *ex situ*, from samples collected from the soils/debris currently at Tank Farm 5 that were disposed from Navy activities at NAVSTA Newport.
2. State any other locations on NAVSTA where the Navy or any other person disposed soils, solid wastes, debris or other materials generated from any construction, CERCLA remediation projects, or any other type of project that has not been authorized under CERCLA or any other legal authority. Identify such locations as precisely as possible, with a clear reference to a map of NAVSTA. State the specific types of soils, solid wastes, debris, or other material disposed, the volumes disposed, the method of disposal, and the dates of such disposal. Explain why the Navy disposed these soils, solid wastes, debris or other materials in this manner. Provide a complete description of such instances of disposal and provide all documents that relate to such disposal. Identify all persons with knowledge of such disposal.
3. Provide all NESHAPs notices pertaining to applicable projects from which these soils, solid wastes, debris or other materials were derived.

4. Provide all waste shipping records pertaining to the applicable projects from which these soils, solid wastes, debris or other materials were derived.
5. In a July 30, 2019 document, the Navy stated that project P-451 Officer Training Command Bachelor's Quarters is a project that may have potentially moved soils, solid wastes, or other materials to Tank Farm 5 between 2008 and 2012. Please provide all relevant records, including documents and electronic communications pertaining to the soils, solid wastes, debris or other materials that may have been moved to Tank Farm 5 and that may have originated from P-451. Include all records relating to the potential for these soils, solid wastes, debris or other material to contain any form of asbestos, including Regulated Asbestos Containing Material (RACM).
6. Include all documents relating to contaminated material, including refrigerants and building debris containing asbestos, PCBs, and mercury, identified by a Navy contractor's website [<https://www.absherco.com/project/officer-training-command-quarters-naval-station-newport>] (Attachment 4) as buried at the site of the former and current Nimitz Hall (Officer Training Command Quarters). This documentation should include all *in situ* and *ex situ* sampling and analytical results, photographs, waste shipment records, and describe all remedial actions conducted at this location. Please provide all information and knowledge regarding remaining asbestos-contaminated material (ACM) contamination and other contamination by hazardous substances, pollutants or contaminants at or in close proximity to the location of the former and current Nimitz Hall and any soils, solid wastes, debris or other materials that may have been moved to Tank Farm 5 and that may have originated from the former and current Nimitz Hall.
7. In a July 30, 2019 document, the Navy stated that project P-347 Consolidated Fitness Center is a project that may have potentially moved soils, solid wastes or other materials to Tank Farm 5 between 2008 and 2012. Please provide all relevant records, including documents and electronic communications, pertaining to the soils, solid wastes, debris or other material that may have been moved to Tank Farm 5 and that may have originated from P-347. Please include all records relating to the potential for these soils, solid wastes, debris or other material to contain any form of asbestos, including RACM.
8. In a July 30, 2019 document, the Navy stated that project P-370 Training Pool Replacement is a project that may have potentially moved soils, solid wastes, or other material to Tank Farm 5 between 2008 and 2012. Please provide all records, including documents and electronic communications, pertaining to the soils, solid wastes, debris or other material that may have been moved to Tank Farm 5 and that may have originated from P-370. Please include all records relating to the potential for these soils, solid wastes, debris or other material to contain any form of asbestos, including RACM.
9. In a July 30, 2019 document, the Navy stated that project P-082 Unmanned ASW Support Facility is a project that may have potentially moved soils, solid wastes or other material to Tank Farm 5 between 2008 and 2012. Please provide all records, including documents and electronic communications, pertaining to the soils, solid wastes, debris and other materials that may have been moved to Tank Farm 5 and that may have originated from P-082. Please include all records relating to the potential for these soils, solid wastes, debris or other material to contain any form of asbestos, including RACM.

10. In a July 30, 2019 document, the Navy stated that project P-101V Relocate NSCS MARDET and CSS is a project that may have potentially moved soils, solid wastes or other materials to Tank Farm 5 between 2008 and 2012. Please provide all records, including documents and electronic correspondence, pertaining to the soils, solid wastes, debris and other materials that may have been moved to Tank Farm 5 and that may have originated from P-101V. Please include all documents relating to the potential for these soils, solid wastes, debris and other materials to contain any form of asbestos, including RACM.
11. In a July 30, 2019 document, the Navy stated that Army Reserve Center is a project that may have potentially moved soils, solid wastes and other materials to Tank Farm 5 between 2008 and 2012. Please provide all records, including documents and electronic communications, pertaining to the soils, solid wastes, debris and other materials that may have been moved to Tank Farm 5 and that may have originated from the Army Reserve Center project. Please include all records relating to the potential for these soils, solid wastes, debris or other materials to contain any form of asbestos, including RACM.
12. In a July 30, 2019 document, the Navy stated that project P-448 New HAZMAT Storage Facility is a project that may have potentially moved soils, solid wastes, and other materials to Tank Farm 5 between 2008 and 2012. Please provide all records, including documents and electronic communications, pertaining to the soils, solid wastes, debris and other materials that may have been moved to Tank Farm 5 and that may have originated from P-448. Please include all records relating to the potential for these soils, solid wastes, debris and other materials to contain any form of asbestos, including RACM.
13. In a July 30, 2019 document, the Navy stated that project P-485 Relocate NAPS HQ, Bldg 440 CP is a project that may have potentially moved soils, solid wastes and other materials to Tank Farm 5 between 2008 and 2012. Please provide all records, including documents and electronic communications pertaining to the soils, solid wastes, debris and other materials that may have been moved to Tank Farm 5 and that may have originated from P-485. Please include all records relating to the potential for these soils, solid wastes, debris or other materials to contain any form of asbestos, including RACM.

Reporting Requirement Under the CAA/Asbestos NESHAP

14. For each of the projects listed in paragraphs 5 through 13 above, *and any other demolition or renovation operations (and associated asbestos removal, transportation, or disposal activities) conducted at NAVSTA Newport that generated any asbestos-containing waste materials ("ACWM") that were deposited at the Site or otherwise caused or contributed to the presence of asbestos-containing materials in soil/debris piles at the Site* (collectively, the "Projects"), provide the date(s) and describe the steps taken to inspect the presence of asbestos, including Category I and Category II nonfriable ACM, before commencing any activity that would disturb the asbestos, including but not limited to the following:

- a. For each of the Projects, provide the name and address of all persons or entities that inspected any facilities and areas within facilities affected and identify any training each person/entity had at the time of the inspection;
 - b. For each of the Projects, state whether sampling was conducted on any asbestos-containing material involved and, if so, the date(s) of such sampling and associated laboratory analysis;
 - c. For each of the Projects, provide the amount of RACM affected (in units of linear feet on pipes, square feet, or cubic feet off facility components where the length or area could not be measured previously) and describe the techniques used to estimate each of the amounts;
 - d. For each of the Projects, provide copies of any written reports describing the results of any inspection(s) identified in response to this item and include copies of any sample analytical results.
15. For each of the Projects, state whether written notice of intent to renovate was provided to the EPA under 40 C.F.R. § 61.145(b) and whether such notice was submitted to EPA at least ten (10) working days before any asbestos stripping or any other activity began that would break up, dislodge, or similarly disturb RACM or suspect ACM. For any of the Projects, if no notification was provided to EPA, provide the reason(s) why notification was not submitted. Provide a copy of any written notices provided for each of the Projects to EPA and/or to any other federal, state, or local agency or instrumentality.
16. Provide a narrative description of each of the Projects, including a chronology with the dates when any demolition or renovation activities occurred for each and, if any such activities occurred in different phases, provide the dates that the demolition or renovation activities began and ended for each phase.
17. For each of the Projects, provide the names of any persons or entities who supervised, directed, performed, authorized, or allowed demolition or renovation activities, including Navy employees, agents, contractors, and subcontractors. For each such person/entity, describe the nature of their involvement and provide the dates when that involvement continued.
18. For each of the Projects, submit copies of all laboratory analytical reports and results for each bulk, wipe, dust, and air sample(s) collected and analyzed before, during, or after each of the Projects, including for any clearance air sampling for each.
19. For each of the Projects, state whether any dust was created or emitted at any time during the process of demolition or renovation and/or RACM removal and, if so, describe the nature of such emissions, the date each emission occurred, and the activities that caused such emissions.
20. For each of the Projects, state whether the RACM or suspect RACM was kept adequately wet throughout the demolition, renovation, or removal operations and describe the method(s) used to keep such material adequately wet during removal. For any of the Projects, if RACM was not kept adequately wet throughout the demolition, renovation, or removal operations, state that and explain why not.

21. For each of the Projects, provide the date(s) that RACM was collected and contained in preparation for disposal and describe the procedures used to collect and contain all ACWM in accordance with 40 C.F.R. § 61.150(a) of the Asbestos NESHAP. For any of the Projects, if RACM/ACWM was not collected and contained for disposal in accordance with 40 C.F.R. § 61.150(a), state that and explain why not.
22. For each of the Projects, provide a narrative description of the bidding/contracting process, a copy of any Request for Proposals (RFPs) issued, a timeline for how each job was carried out, and a copy of all contracts put in place for each.
23. For each of the Projects, provide copies of all other documents that the Navy produced or kept in the context of each Project, including any report, engineering study and/or laboratory sample analyses, as well as, all minutes, notes, logs, and journals concerning demolition, renovation, or asbestos removal activities at each.
24. For each of the Projects, provide copies of all other correspondence (*i.e.*, letters, permit applications, permits, waivers, Notices of Violation, *etc.*) between the Navy and any Federal, State, or Local Agency regarding demolition, renovation, or asbestos removal activities at each.
25. For each of the Projects, provide any other available documentation created or otherwise obtained by the Navy that relates to any of the Projects that was not already provided in response to a previous question herein.

ATTACHMENT 3

DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of the Navy to the foregoing Reporting Requirement. I certify that the responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information to EPA, including the possibility of fines and imprisonment.

By _____
(Signature)

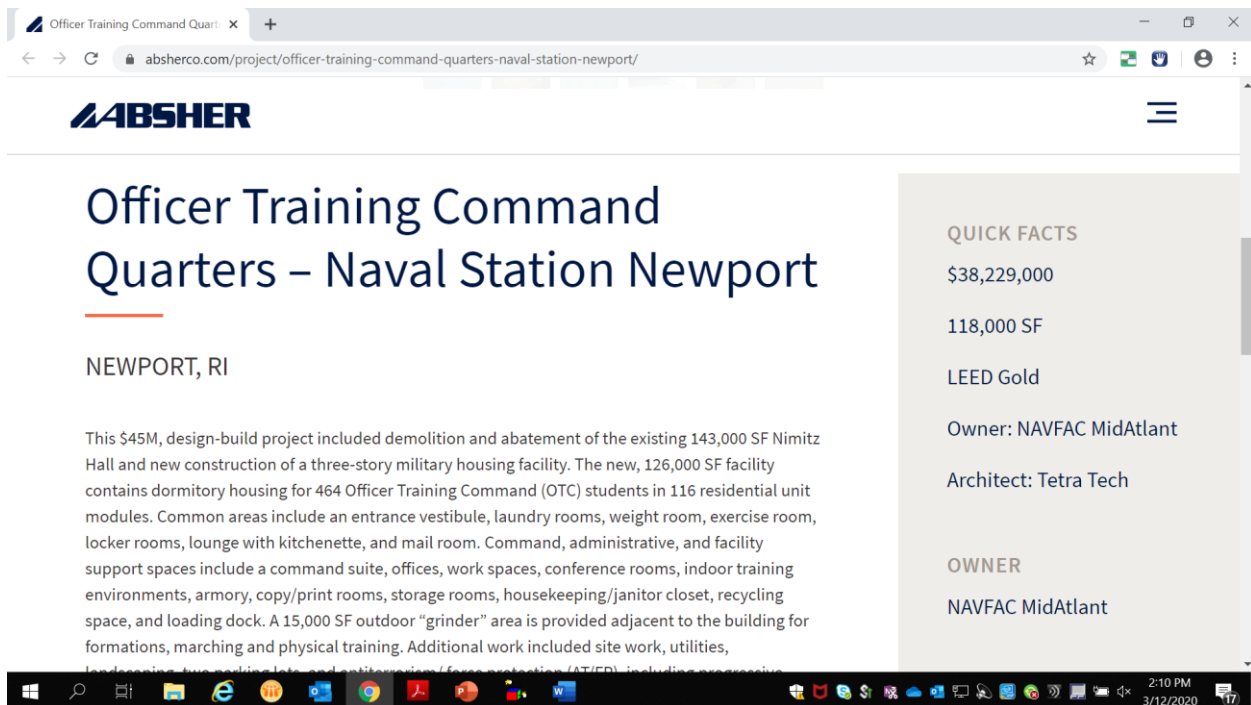
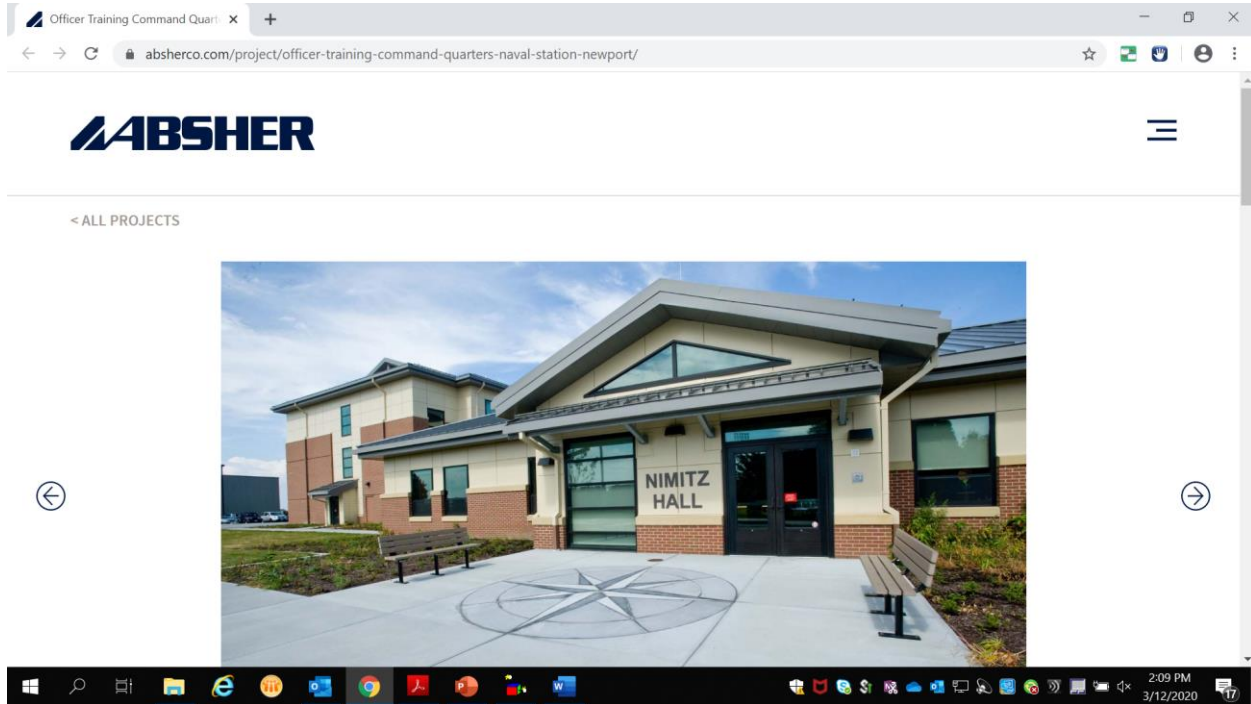
Date: _____

(Title)

(Address)

ATTACHMENT 4

<https://www.absherco.com/project/officer-training-command-quarters-naval-station-newport/>



NAVSTA Newport - Tank Farm 5

CERCLA/CAA Information Request

Officer Training Command Quar...

absherco.com/project/officer-training-command-quarters-naval-station-newport/

NAVFAC MidAtlant

ABSHER

environments, armory, copy/print rooms, storage rooms, housekeeping/janitor closet, recycling

A 15,000 SF outdoor "grinder" area is provided adjacent to the building for formations, marching and physical training. Additional work included site work, utilities, landscaping, two parking lots, and antiterrorism/ force protection (AT/FP), including progressive collapse. The project was constructed to meet LEED Gold standards.

After contract award, and just prior to the first design submittal, the Navy requested the building be redesigned to increase the overall square footage by 25%. Absher mitigated this major schedule impact by facilitating a new design charrette and over-the-shoulder reviews with the Navy, which allowed all parties to outline the effects this change would have on all design disciplines. This proactive approach allowed the Navy to issue a Notice to Proceed much faster than following the traditional RFP process and minimized the impacts to the critical path.

Later in the project, we discovered extensive hazardous contamination buried on the site, including refrigerants and building debris containing asbestos, PCBs, and mercury, as well as asbestos and mold in the existing building that was to undergo demolition. Absher worked closely with the Navy to revise the schedule and modify the contract to allow for the additional work required. Immediately after the unforeseen conditions were discovered, we began working with our civil subcontractor and demolition subcontractor to apply for the necessary permits and proactively plan for the extra equipment we would need to remediate the site. This minimized the permit waiting period and also allowed us to begin remediation as soon as authorization was received from the Navy. Our proactive approach saved weeks on the critical path of the project schedule.

2:10 PM 3/12/2020

Officer Training Command Quar...

absherco.com/project/officer-training-command-quarters-naval-station-newport/


NAVFAC MidAtlant


ABSHER


approach saved weeks on the critical path of the project schedule.

The Navy's construction manager for the project stated, "Regardless of numerous unforeseen conditions, Absher continually managed to keep the project on-track and on-budget. They maintained focus on the issues and protected the government's best interest during change conditions by closely interacting with subcontractors to provide reasonable price proposals for required work. Absher's performance on this contract was outstanding. In my 27 years working for the Navy, I have not had a better experience with a contractor."

Related Projects







2:12 PM 3/12/2020